

(2000) 01 MAD CK 0078

In the Madras High Court

Case No : Writ Petition No's. 7794 and 7795 of 1992 and W.M.P. No's. 11239 and 11240 of 1992

Ganapathy Subramaniam J.

APPELLANT

Vs

Canara Bank and Another

RESPONDENT

Date of Decision : 05-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 300A

Citation : (2000) 3 LLJ 813

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Y. Venkatachalam, J.—In these matters, the subject-matter involved as well as the respondents are common, both these writ petitions were taken up together and are disposed of by this common order with the consent of the parties concerned.

2. Invoking Article 226 of the Constitution of India, the petitioners herein have filed the present writ petitions seeking for a writ of mandamus to forbear the respondents from any deductions from the petitioner's salary for May 8 1992, May 9, 1992, May 10, 1992, May 15, 1992 and May 16, 1992 (in Writ Petition No. 7794 of 1992) and for May 16, 1992 (in W.P No. 7795 of 1992) on the principle of "no work no pay" from the salary payable to the petitioners for the month of May 1992 or for subsequent months.

3. In support of these writ petitions, the petitioners herein have filed separate affidavits wherein they have narrated all the facts and circumstances that forced them to file the present writ petitions and requested this Court to allow the writ petitions as prayed for. Per contra, on behalf of the respondents separate counter-affidavits have been filed rebutting all the material allegations levelled against them one after the other and ultimately they have requested this Court to dismiss these writ petitions for want of merits.

4. Heard the learned counsel appearing for the respective parties. I have perused the contents of the affidavits and the counter-affidavits together with all other relevant material documents available on record in the form of typed set of papers. I have also taken into consideration the various points raised by the learned counsel appearing for the respective parties during the course of their arguments.

5. In the above facts and circumstances of these cases, the only point that arises for consideration is, as to whether there are any valid grounds to allow these writ petitions or not.

6. The brief facts of the case of the petitioners as seen from the affidavits are as follows: The petitioners herein are working as clerk in the Habibullah Road Branch of the respondent Canara Bank. They have been assigned the duties of operating the Advance Ledger Posting Machine hereinafter referred to ALPM. The said ALPM is introduced in the bank after signing the Bipartite Settlement on industrial level during March 1987. The above settlement lays down the broad guidelines for the selection of ALPM operators and in terms of the settlement, a monitory committee was formed to monitor the implementation of the settlement in all aspects and the said committee consists of representatives both from the management and Canara Bank Employees Union in which they are members. According to them, it is specifically understood between the aforesaid union and the management that ALPM operators are not allotted any clerical work. This understanding was arrived at between the members of the monitoring committee and this understanding was also implemented in their case and they have not been entrusted with any clerical work while operating ALPM. That being so, suddenly in violation of the understanding the Chief Manager of the Canara Bank, Habibullah Road, allotted clerical work in addition to the operation of ALPM where the ALPM operator cannot be entrusted with any clerical work. That apart it will be impossible for ALPM operators to do the additional clerical work as the quantum of work turned out by ALPM operator is sufficient to keep him busy on the ALPM machine during working hours. On the relevant dates in question herein the Chief Manager, respondent asked these petitioners to perform clerical work and they could not perform the said work, because they were busy on ALPM Machine on the said dates. That being so, the Chief Manager issued a memo, dated May 10, 1992 (in W.P. No. 7794 of 1992) and a memo, dated May 16, 1992 (in W.P. No. 7795 of 1992) alleging that they failed to comply with the lawful order of their superiors and that therefore they have not earned the salary and emoluments for the said dates on the principle of "no work no pay". They were called upon to give their explanation and they submitted their explanation on May 19, 1992. According to them, they performed their duties as ALPM operators on the relevant dates. Notwithstanding their reply the respondents insisted that necessary deduction from his salary for the month of May 1992 be made and accordingly prepared the salary sheet by feeding the computer with necessary particulars. However, it is the grievance of the petitioners herein that the respondents refused to give them specific order in writing deducting their

wages for the relevant dates, viz., May 8, 1992, May 9, 1992, May 15, 1992 and May 16, 1992 in W.P. No. 7794 of 1992 and May 16, 1992 in the other case. Their case is that the action of the respondent in deducting their wages for the relevant dates is illegal and totally unlawful. They contend that the action of the second respondent not to pay their emoluments on the false allegations that they failed to comply with the lawful order is totally illegal, that the award staff of the bank and the management have entered into Bipartite Settlement in regard to the conditions of service of its workman. The terms of the settlement is incorporated in the Service Code. Chapter XI deals with disciplinary action which enumerates both gross misconduct and minor misconduct and the punishment imposed for the same. The award staff (workman) of the bank under the terms of employment are paid salary on the monthly basis. There is no provision either under the Bipartite Settlement relating to wage scale, etc., nor there is any statutory powers of the bank to divide monthly wages into number of days, hours, minutes for the purpose of effective wage-cut. In the absence of the specific term in the contract of the employment, the management of the bank cannot unilaterally reduce the monthly wage and give them lesser monthly salary than the one contracted. If according to the management, there was non-observance of contract of employment it may give that cause of action for breach of contract and right to take appropriate remedy for such breach. But if the monthly contract is kept alive and subsisting, deduction by the bank of the days wages would be arbitrary and impermissible. Therefore according to the petitioners herein the action of the bank is without any legal sanction. It is their categoric contention that the bank has no authority to deduct the entire wages for the alleged non- performance of work during a portion of the working hours, and that the respondents cannot reduce the monthly salary.". According to them, the monthly wages and allowances to the petitioner is property within the meaning of Article 300-A of the Constitution of India, and such right to property cannot be deprived except in accordance with law. Also according to them the bank is a State within the meaning of the Article 12 of the Constitution and that the action of the bank and the impugned communication of the bank is violative of Article 14 of the Constitution of India. Further according to them, the impugned action cannot be elevated to the position of the procedure prescribed in law by which the petitioner would be deprived of his right to get monthly wages. It is also their case that the impugned action is illegal and is against the decision of this Court reported in 1989 (1) LLN 717, and the respondent-bank is also a party to that decision. Having no other alternative remedy, they have come forward with the present writ petitions.

7. Per contra, in the counter-affidavits it is contended by the respondents that the service conditions of the award staff are governed by the Bipartite Settlement as modified from time to time. Award staff are assigned with certain duties which are called as special allowance duties such as telephone operators, audit clerks, tele operators, etc., such of those clerks who are posted in the special allowance duties are entitled to special allowance on the terms and

conditions provided under Chapter of the different Bipartite Settlements as modified from time to time. The special allowance duties which if performed in addition to the routine duties would entitle the workman to the special allowance. However, the workman entrusted with duties attracting special allowance can be required to perform routine duties of his cadre. In the year 1987 the ALPM were installed in accordance with Clause (i) of the Bipartite Settlement, dated September 8, 1983, and the one, dated March 29, 1987. With regard to selection of ALPM operators, a settlement, dated August 14, 1987 and June 20, 1988 was entered into between the management of the Canara Bank and its union. Thereafter by settlement, dated November 17, 1990, fresh terms were agreed to between the parties with regard to method of selection of ALPM/AEAM operators. The fresh settlement, dated November 17, 1990, provided for payment of special allowance and among other terms regarding the selection of the candidates prescribed qualification, etc. The ALPM/AEAM operators are none other than clerks, who on successful completion of the selection procedure provided under the settlement, dated November 17, 1990, are included in the panel of candidates eligible to be posted as ALPM/AEAM operators. According to the respondents, in other words, they continue to be retained as clerks and as and when assigned the duties of ALPM/AEAM operators, they are paid special allowance as provided under the settlement, dated November 17, 1990. Such of those ALPM/ AEAM operators who are assigned with special allowance duties are retained in the clerical category and paid special allowance on occasions when they perform special allowance duties. That part it is also their case that by circular No. 42 of 1985, dated January 29, 1985, in regard to special assistance who are assigned the work of special allowance duties it was clarified that a workman entrusted with duties attracting special allowance can be required to perform routine duties of his cadre and for the performance of those duties no special allowance shall be payable. In tune with the above circular read with settlement, dated November 17, 1990, the ALPM/AEAM operators wherever they were working were assigned with normal duties of clerical cadre on occasions when there was no work to be performed as ALPM/AEAM operators. According to the respondents this practice is in vogue ever since such special duties are assigned, and that the special allowance is an allowance paid to a workman employee as compensation for performing or discharging certain additional duties and functions requiring greater skill and responsibility over and above his routine duties and functions. It is the case of the respondents that as far as these petitioners are concerned, they belong to the clerical category, that they were selected as ALPM operators and were working as ALPM operators in the second respondent branch, that as per the job rotation given in the month of January 1992 in the second respondent branch, writing of DDs and DD summary was attached to the transfer waste ALPM operator and that even prior to January 1992 also the ALPM operator of transfer waste department was carrying out the work of writing of DDs. According to the respondents, the petitioners also accepting the same by acknowledged in the work distribution chart. It is also their case that however, the petitioners represented that the sitting arrangement

provided in the branch was not convenient for him to write the DDs and at his request he was provided a separate table near his seat for the purpose of writing DDs. In other words, the petitioner was carrying out other clerical work apart from the work carried out by him, as ALPM operator. However, when a request was made on his behalf, certain other clerical work such as tappal and H.O., summary was assigned to the transfer waste Department. It is the case of the respondent that the second respondent branch starts functioning at 8.30 A.M. and the flow of slips to transfer waste department would start only around 10.30 AM. or 11.00 A.M. and that therefore the time between 8.30 A.M. and 10.30 A.M. would be utilised for attending to tappal and H.O. Department, since the workload involved was not much. Due to certain leave vacancy created with effect from May 5, 1992 there was re-distribution of the workload, in that the process of writing of minor subsidiaries like general charges, interest paid, commission, etc., were attached to ALPM department of current account and OD and OCC. The same was done since the workload in the said department was not the expected level. Moreover, it was felt that the above change would take care of the leave vacancy and also avoid dislocation in the day-to-day functioning and to maintain good customer service. Before implementing the above changes, concerned staff were personally called and requested to carry out the work to ensure smooth functioning of the branch and in the interest of best customer service. The concerned staff also agreed to carry out the same with effect from May 6, 1992. Unfortunately, the concerned staff refused to carry out the duties allotted to them on certain baseless grounds. In spite of persuasion of the second respondent, the concerned staff refused to carry out the duties. In such circumstances, in tune with the notice displayed in memo No. 247 of 1979, dated June 20, 1979, the petitioner was informed that since he failed to comply the lawful and reasonable orders of the superior, he failed to earn his salary and emoluments for the days, i.e., May 8 to 10 1992, May 15 and 16, 1992 in one case and May 16, 1992 in the other case on the principle of "no work no pay." It is also their contention that by virtue of the circular No. 42 of 1985 read with notice, dated June 20, 1979, as well as the Bipartite Settlement as modified from time to time, the contract of employment involves reciprocal promises and the employees right to remuneration depends entirely upon the performance of his work for a specified period and therefore his remuneration was payable only if the principal terms of his employment are effectively fulfilled. Consequently an employee would be in breach of his contract of service if he on his own failed or refused to perform normal work in the normal manner in the normal working hours. Therefore, it is their categorical case that if any of the employees is in breach of his contract of service on any day or even for a part of the day, he will not be entitled to pay and allowance for the whole of that particular day, since when he commits the breach as mentioned above, no work is expected of him for the rest of the day, and that the respondent is also not obliged to issue any notice to the employee before exercising its right not to pay wages as stated above and that it was on the above said principle, the petitioner was issued with the communication and the second respondent was fully justified in issuing the

said communication. Thus it is their specific contention that the employees who did not perform work in the normal manner as per the instructions refused to do work entrusted to them are not entitled for the wages for the full day on the principle of "no work no pay" since the terms and conditions of employment consists of reciprocal promises and when the employees having not performed their part of the contract fully, the employees cannot claim performance of reciprocal promise of payment of employments from the employer. Interalia, it is also contended by the respondents that it is purely the terms of contract of employment between the petitioners and the respondent and when once the petitioners admittedly committed the breach of the terms of the contract, the respondents are entitled to invoke their rights as provided under the terms and it is not open to the petitioners to challenge the same. Thus the action of the respondent-bank was fully justified and that therefore the writ petition is liable to be dismissed.

8. Having seen the entire material available on record and from the facts and circumstances of this case, the following are the admitted facts. The petitioners herein were working as clerks in the second respondent-bank. The service conditions of the award staff are governed by the Bipartite Settlement as modified from time to time and in the year 1987 electronic accounting machine with memory other than computers described as "Advance Ledger Posting Machine" (ALPM) or "Advance Electronic Account Machine" (AEAM) were installed in accordance with Clause I of the Bipartite Settlement, dated September 8, 1983, and the one, dated March 29, 1987. A fresh settlement dated November 17, 1990, provided for payment of special allowance and among other terms regarding the selection of the candidates prescribed qualification, etc. The ALPM/AEAM operators are none other than clerks, who on successful completion of the selection procedure provided under the settlement, dated November 17, 1990, are included in the panel of candidates eligible to be posted as ALPM/AEAM operators. In other words they continue to be retained as clerks and as and when assigned the duties of ALPM/ AEAM operators, they are paid special allowance as provided under the settlement, dated November 17, 1990. Further such of those ALPM/AEAM operators who are assigned with special allowance duties are retained in the clerical category and paid special allowance on occasions when they perform special allowance duties. Moreover circular No. 42 of 1985, dated January 29, 1985, in regard to special assistants who are assigned the work of special allowance duties, it was clarified that a workman entrusted with duties attracting special allowance can be required to perform routine duties of his cadre and for the performance of those duties no special allowance shall be payable. In tune with the above circular read with settlement, dated November 17, 1990, the ALPM/AEAM operators wherever they were working were assigned with normal duties of clerical cadre on occasions when there was no work to be performed as ALPM/AEAM operators. This practice is in vogue ever since such special duties are assigned. That being so it is also clear in these cases that the petitioners herein are working as clerks with the second respondent branch who

has been assigned the special allowance duties as ALPM operator and as per the prevailing working condition they are bound to attend to the routine duties as and when they are not provided with special allowance duties. It is also significant to note that there was no understanding at all between the union and the management that the ALPM operators need not be allotted any clerical work, and the petitioners were not entrusted with any clerical work while operating ALPM. However, it is conceded by the respondents that the petitioner did attend to the other clerical work of writing DDs earlier and on their suggestion they were provided a separate table near their seat for the purpose of writing DDs while they were attending to special allowance duties as ALPM operator. Further according to the respondents, as agreed between the parties, they used to be directed to attend to other clerical work till they are required to operate ALPM. Therefore the petitioners herein cannot contend that the ALPM operator cannot be entrusted with any clerical work and it would be impossible to do any additional clerical work. Further it is their strong case that by virtue of the circular No. 42 of 1985 read with notice, dated June 20, 1979, as well as the Bipartite Settlement as modified from time to time, the contract of employment involves reciprocal promises and the employee's right to remuneration depends entirely upon the performance of his work for specified period and therefore his remuneration was payable only if the principal terms of his emolument are effectively fulfilled, and consequently an employee would be in breach of his contract of service if he on his own failed or refused to perform normal work in the normal manner in the normal working hours. Therefore it is the categorical contention of the respondents that if any of the employee is in breach of his contract of service on any day, or even for a part of the day, he will not be entitled to pay and allowance for the whole of that particular day, since when he commits the breach as above, no work is expected of him for the rest of the day and it was on the above said principle the petitioner was issued with the communication and the second respondent was fully justified in issuing the said communication. It is also their contention that the employees who did not perform work in the normal manner as per the instructions refused to do work entrusted to them, are not entitled for the wages for the full day on the principle of "no work no pay." I see every force in the above contentions of the respondents. Because in this case it is clearly admitted even by the petitioners herein they refused to carry out the duties allotted to them and inspite of persuasion of the second respondent the concerned staff refused to carry out the duties. Further in this case it is also made clear that as per the prevailing working conditions he is bound to attend to the routine duties as and when he is not provided with special allowance duties. That being so, it is not proved by the petitioners herein that there was any understanding between the union and the management that the ALPM operators need not be allotted any clerical work. That apart it is also significant to note that as observed earlier, the petitioners herein did attend to the other clerical work of writing DDs earlier and on their suggestions they were provided a separate table near their seat for the purpose of writing DDs while they were attending to special allowance duties as ALPM

operator. Therefore when the employees having not performed their part of the contract fully, the employees cannot claim performance of reciprocal promise of payment of emoluments from the employer. Thus it is very clear in these cases that the petitioners herein failed to attend the above work allotted to them despite specific orders and request from their superiors, and thus they also failed to earn their wages for the particular dates and in such circumstances only the memos were issued to the petitioners informing them about their not earning their wages for the relevant dates on the principles of "no work no pay." Therefore it is rightly contended by the respondents in these cases that the issuance of the communications impugned in these writ petitions are fully justified and the same do not call for any interference from this Court.

9. In support of their case, the learned counsel appearing for the petitioners relied on the following decision:

R. Rajamanickam v. Indian Bank, 1982 (2) LLN 241, wherein it has been held as follows, in para. 24, at page 249:

"When the petitioner and other award staff abstained from duty on December 29, 1977 for four hours, the respondent-bank did not acquiesce in the breach of contract and chose to treat the contract of employment for the day as totally breached and declared that there will be no pay for the day in question. Hence the aspect of acquiescence, which had very much weighed with PADMANABHAN, J., in V. Ganesan v. State Bank of India, 1981 (1) LLN absent in the instant case."

Apart from that in the said decision it has also been specifically held that the proposition of "no work, no pay" has been declared and settled without any ambiguity by a Division Bench. That being so, the above decision relied on by the petitioners is not at all helpful to them in any way.

10. Per contra, on behalf of the respondents the following decisions were relied on:

(1) Vikram Tamaskar and Others Vs. Steel Authority of India Ltd. and Others, wherein it has been held as under:

"Under the general law, the performance service in accordance with the contract of employment is a condition precedent for earning the remuneration or salary. If the contract is indivisible providing for payment on the completion of a definite period of service or a definite piece of work men no part of the remuneration can be recovered unless the service is completely performed. The employee may, however, be entitled to remuneration for the period he actually worked when there is a usage to that effect, or where there is a fresh or implied agreement to that effect, or where the contract has been frustrated, or where it has been so altered by the employer that the employee is entitled to regard it as at an end. If an employee absents from work without just cause or excuse, he commits a breach of the terms of the contract. A refusal to obey a lawful order or a refusal to serve the employer faithfully by "working to rule" or interpreting lawful orders

in an unreasonable way, both amount to breach of contract".

(2) Fact Engineering Workers Association v. Labour Court, 79 FJR 516, wherein it has been has follows:

"A workman should be deemed to be absent from the place of work where he is required to work if, although present in such place, he refuses to carry out the work allotted to him by the employer. If the work so allotted by the employer is not carried out by the workman, he must be deemed to be absent from the place of work and, consequently, he could not be entitled to his wages. A workman has to carry out the work allotted to him by the employer. He cannot decide for himself what work he should do."

(3) Syndicate Bank and another Vs. K. Umesh Nayak, wherein it has been held as follows:

"Unless the strike is legal and justified, workmen would not be entitled to wages for period of strike".

(4) Tamil Nadu Electricity Board Accounts Staff Union v. Tamil Nadu Electricity Board, wherein it has been held as follows:

"It is true that trade unionism is recognised all over the world but that does not mean that an office-bearer of the union can claim, as of right, that he can do union work during office hours. When the workmen were given a concession, dictated by the then prevailing circumstances, it should not be considered an inviolable right, it cannot be argued that merely because the recognition of trade union is a part of the service conditions it must necessarily follow that a right to represent or espouse the cause of workmen during office hours is a necessary concomitant."

Thus, from the above decisions, it is clear that though the third and fourth decisions cited are not directly applicable to the case on hand, the first two decisions are squarely applicable to the facts of the case on hand and support the stand taken by the respondents herein.

11. Therefore from all the above, and in the facts and circumstances of these cases and also in view of my above discussions with regard to various aspects of these cases and also in the light of the various citations discussed above, I am of the clear view that the petitioners hereinabove miserably failed to make out any case in their favour and that therefore there is no need for any interference with the respondent's action impugned in these writ petitions. Thus the writ petitions fail and are liable to be dismissed for want of merits.

12. In the result both the writ petitions are dismissed. No costs. Consequently W.M.P. Nos. 7794 and 7795 of 1992 are also dismissed.